

## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed August 20, 2008. The Examiner is thanked for the thorough examination of the present application. Upon entry of this response, claims 1-22 are pending in the present application. Applicants respectfully request consideration of the following remarks contained herein. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Objections to the Specification**

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter of “computer readable medium” in claims 12-22. In addressing the §101 rejection set forth in the Office Action (discussed below), Applicants have amended “computer readable medium” to “computer readable storage medium.” While this terminology is not explicitly used in the specification, Applicants respectfully submit that one of ordinary skill in the art would interpret the description in the specification directed to the computer system depicted in FIG. 1 to refer to a computer readable storage medium. Such relevant text includes the following:

[0020] Referring now to the Figures and, in particular, to FIG. 1, there is shown a high-level block diagram illustrating a computer system 100 for use with the present invention. In particular, computer system 100 includes a central processing unit (CPU) 110, a plurality of input/output (I/O) devices 120, and memory 130. Included in the plurality of I/O devices are such devices as a storage device 140, and a network interface device (NID) 150. Memory 130 is typically used to store various applications or other instructions which, when invoked enable the CPU to perform various tasks. Among the applications stored in memory 130 are an operating system 160 which executes on the CPU and includes the thread scheduling application of the present invention.

Additionally, memory 130 also includes various real-time programs 170 as well as non-real-time programs 180 which together share all the resources of the CPU. It is the various threads of programs 170 and 180 which are scheduled by the thread scheduler of the present invention.

(Emphasis added; Par. 0020). Based on the foregoing, Applicants believe that there is proper support in the specification for the claimed subject matter in claims 12-22. As such, Applicants respectfully request that the objection to the specification be withdrawn.

## **II. Response to Claim Rejections Under 35 U.S.C. § 101**

Claims 12-22 are rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. As indicated above, Applicants have amended the claims to address the rejection and respectfully request that the §101 rejection be withdrawn.

## **III. Response to Claim Rejections Under 35 U.S.C. § 112**

Claims 1-22 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7 and 8 have been amended to provide sufficient antecedent basis. Regarding claim 8, Applicants note that there is sufficient antecedent basis for “the array of threads” recited as claim 8 introduces “an array of threads” in an earlier step (“maintaining an array of threads requesting immediate CPU resource allocation for each of the plurality of circular arrays”).

Applicants have amended the various remaining claims rejected under §112 to provide further clarification, as needed.

Applicants note that in rejecting various claims under §112, 2<sup>nd</sup> paragraph (e.g., for claims 1, 7, 8), however, the Office Action asserts that certain steps fail to include the “criteria” for performing such steps. Applicants respectfully submit that the various claims are directed to systems and methods for scheduling thread execution and that no essential steps/elements appear to have been omitted. Moreover, Applicants believe that essential cooperative relationships are clearly defined within the various claims. As such, Applicants respectfully assert that the scope of the claims is clear to one possessing ordinary skill in the pertinent art. In particular, the elements/steps identified in the Office Action are clear to the extent that they interrelate with the other elements of the claims in which they appear. To this end, Applicants respectfully assert that one skilled in the art is able to appreciate the “metes and bounds” of the claims. Based on the foregoing, Applicants respectfully request that the §112 rejection be withdrawn.

#### **IV. Response to Claim Rejections Under 35 U.S.C. § 103**

The USPTO has the burden under section 103 to establish a *prima facie* case of obviousness according to the factual inquiries expressed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The four factual inquires, also expressed in MPEP §2141, are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and

(D) Evaluating evidence of secondary considerations.

For a proper rejection of the claim under 35 U.S.C. §103, the cited combination of references must disclose, teach, or suggest all elements / features of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

**A. Rejections under 35 U.S.C. 103(a)**

Claims 1-22 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Moore* (U.S. Pub. No. 2004/0205753) in view of *Huynh et al.* (U.S. Pat. No. 5,386,561 hereinafter referred to as “*Huynh*”). Applicants respectfully traverse this rejection. Under 35 U.S.C. 103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under 35 U.S.C. 103(a) where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. The Manual of Patent Examining Procedure (MPEP) 706.02(l)(2) provides in pertinent part:

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

**B. Statement under 35 U.S.C. 103(c)**

Application Serial No. 10/735,678 and Published Patent Application No. 2004/0205753 to *Moore* were, at the time the invention of Application No. 10/735,678 was made, owned by Globespan Virata Inc. According to MPEP 706.02(I)(2), the foregoing statement is sufficient to establish this fact.

As set forth above, Applicant respectfully submits that *Moore* and the present application were commonly-owned or under an obligation to be assigned to the same entity. It is Applicants' understanding that the present application and the *Moore* reference were commonly owned by Globespan Virata Inc. at the time the invention was made. Therefore, Applicants respectfully submit that common ownership between the present application and the *Moore* reference at the time the invention was made has been established under 35 U.S.C. § 103(c).

Accordingly, Applicants respectfully submit that the *Moore* reference is therefore disqualified as prior art under 35 U.S.C. § 103(c) because the *Moore* reference qualifies as prior art under one or more sections (e), (f) and (g) of Section 102, and the present application and the *Moore* reference were commonly owned or under an obligation of assignment to the same person at the time the invention was made.

Based on the foregoing, Applicants respectfully submit that because all of the obviousness rejections are premised on the *Moore* reference and because the *Moore* reference is disqualified as prior art under 35 U.S.C. § 103(c), the obviousness rejections have been overcome and should be withdrawn.

**CONCLUSION**

Applicants respectfully submit that all pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this amendment and response to Office Action. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 50-0835.

Respectfully submitted,

/Jeffrey Hsu/  
**Jeffrey C. Hsu**  
**Reg. No. 63,063**

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**  
600 Galleria Parkway S.E.  
Suite 1500  
Atlanta, Georgia 30339  
(770) 933-9500